

No 49772-7-II.

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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PENINSULA HOUSING AUTHORITY

Appellant,

v.

LEE ANN DANIELS, and all other occupants of the premises,

Respondents.

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Christopher Melly  
Cause No. 16-2-00371-3

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

Peninsula Housing Authority (“**PHA**”) administers affordable housing through several federal and state programs in Clallam County. PHA sued one of its tenants, Lee Ann Daniels (“**Tenant**”), for unlawful detainer because she failed to pay her rent. The trial court entered an Order for Issuance of Writ of Restitution, awarding possession of the leased premises to PHA. Prior to the county sheriff executing on the Writ of Restitution, the parties came to an agreement that allowed Tenant to retain possession of the leased premises, provided she paid the delinquent amount she owed to PHA under the lease.

Subsequently, PHA moved for a judgment against Tenant to recover its attorneys’ fees and costs, to which it was entitled under the lease agreement and Washington law. The trial court initially denied PHA’s motion based on Tenant’s economic status, stating that it would not impose a civil judgment on someone who could not pay it based on a criminal case—*City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016). After PHA moved for reconsideration, the trial court reversed itself, agreeing that Tenant had a contractual and statutory obligation to pay attorneys’ fees and costs and that it did not have the discretion to unilaterally decline to award such fees and costs. Accordingly, the trial court granted PHA a judgment against Tenant for attorneys’ fees and costs. However, notwithstanding the trial court’s acknowledgement that the attorneys’ fees and costs for which PHA was seeking a judgment

against Tenant were objectively reasonable, the trial court significantly decreased the amount of PHA's attorneys' fees and costs, again citing Tenant's supposed economic status and *Wakefield* as its basis.

This Court is tasked with determining whether the trial court abused its discretion when it reduced PHA's reasonable attorneys' fees and costs based on *Wakefield* and Tenant's economic status. As discussed below, this Court should reverse the trial court because it lacked the authority to subjectively reduce PHA's reasonable attorneys' fees and costs.

Indeed, the only authority the trial court had under Washington law and the lease agreement was to determine the reasonableness of PHA's attorneys' fees and costs. Once the trial court determined PHA's attorneys' fees and costs were reasonable, it was obligated under Washington law to award them without reduction.

In addition, the trial court erred by relying on *Wakefield*. *Wakefield* applies only to indigent defendants in the criminal context—not to private parties in the civil context.

If this Court were to affirm the trial court, the longstanding and fundamental principles of contract law would be undermined by making enforcement of contracts unpredictable.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignment of Error**

The trial court erred in its Memorandum Opinion on Reconsideration entered November 30, 2016, by significantly reducing PHA's reasonable attorneys' fees and costs award based upon Tenant's supposed economic status.

### **B. Issue Pertaining to the Assignment of Error**

Did the trial court abuse its discretion in reducing PHA's attorneys' fees and costs award?

## **III. STATEMENT OF THE CASE**

PHA manages housing developments and administers low income housing programs through several federal and state agencies in Clallam County. Appellant's Clerk's Papers (CP) 38:9-11, Jan. 12, 2017. Tenant was a tenant at one of PHA's properties. CP at 89:21-24. During her tenancy, Tenant defaulted on her obligation to pay rent. CP at 90:7-13. Consequently, PHA filed an unlawful detainer action against Tenant in Clallam County Superior Court. Subsequently, both parties participated in a hearing<sup>1</sup> to determine whether PHA was entitled to re-take possession of the leased premises. The trial judge entered an Order for Issuance of Writ of Restitution, restoring possession to PHA. Verbatim Report of Proceedings (RP) 14:20-24. However, prior to the sheriff executing on the Writ of Restitution, the parties came to an agreement to allow Tenant to

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<sup>1</sup> Tenant was represented by counsel. CP at 76.

maintain possession of the leased premises. Under the agreement, Tenant would be permitted to maintain possession provided she pay the outstanding rental amount owed under the lease agreement. CP at 33:4-7.

Despite that agreement, PHA was still entitled to recover its reasonable attorneys' fees and costs under the lease agreement and Washington law. The lease provides, in relevant part:

In the event that a suit or action is brought by either party against the other, the Court shall award attorney fees and costs incurred as appropriate.

CP at 92:3(E).

PHA moved for a judgment against Tenant to recover its attorneys' fees and costs in the matter. At a hearing on the attorneys' fees and costs issue, the trial court orally denied PHA's motion for a judgment, reasoning that *Wakefield*, which limits the ability of trial courts to impose Legal Financial Obligations on indigent criminal defendants, should be extended to civil proceedings. RP at 20:16-18. Specifically, the trial court asserted that *Wakefield* should be interpreted to prevent courts from enforcing contractual obligations against civil parties based on their economic status. RP at 21:8-16.

PHA moved for reconsideration, arguing that the Superior Court's interpretation of *Wakefield* and Washington law was misguided. CP at 33:15-24. Tenant responded, arguing that entry of a judgment in this matter would not be equitable based on her economic status. CP at 23:13-

19. Notably, the record does not include any proof of Tenant's economic status.

The trial court agreed with PHA that it erred in not "applying the mandatory attorney's fees language of the lease and RCW 4.84.330." CP at 17:25-27. However, the trial court reduced the award from the amount requested by PHA, \$2,246.40, to \$100.00. CP at 19:11-13. Although the trial court acknowledged that PHA's requested attorneys' fees and costs were, in fact, reasonable, it determined that it would reduce the amount of fees based solely on Tenant's supposed economic status. *See* CP at 18:14-19:3. The trial court reasoned that it was "vested with broad discretion in determining how much in attorney's fees should be awarded to the prevailing party." CP at 18:1-3. Although the trial court acknowledged that PHA's requested attorneys' fees and costs were, in fact, reasonable, it determined that it would reduce the amount of fees based solely on Tenant's supposed economic status. *See* CP at 18:14-19:3.

#### **IV. STANDARD OF REVIEW**

This Court reviews the reasonableness of an attorney fee awards on appeal for an abuse of discretion. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 595, 675 P.2d 193 (1983). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A trial court's decision "is based on untenable reasons if it is based on an incorrect standard or the facts do not



meet the requirements of the correct standard.” *Id.* at 47. The party appealing the trial court’s attorney’s fee and costs award bears the burden of showing that the trial court abused its discretion. *Council House, Inc. v. Hawk*, 136 Wn. App. 153, 159, 147 P.3d 1305 (2006).

## V. ARGUMENT

Although the trial court determined correctly that PHA was entitled to its reasonable attorneys’ fees and costs pursuant to the lease agreement and RCW 4.84.330, it abused its discretion by relying on an incorrect legal standard to reduce PHA’s award from \$2,246.40 (including \$1,980.00 in attorneys’ fees and \$266.40 in costs) to \$100.00 total. *See* CP at 15:24-26, 19:11-13. First, once the trial court determined that PHA’s attorneys’ fees and costs were reasonable, it was obligated to enforce them under the lease agreement and Washington law. Second, the trial court’s reliance on *Wakefield* was simply incorrect—*Wakefield* applies only to indigent criminal defendants, not civil litigants. Finally, were this Court to affirm, it would undermine fundamental principles of contract law—enforcement of contracts would become unpredictable.

### 1. The Trial Court Only Had the Authority to Determine Whether PHA’s Attorneys’ Fees and Costs Were Reasonable—Not the Authority to Re-Write the Lease Agreement

In cases where a prevailing party is contractually entitled to reasonable attorneys’ fees and costs, Washington courts have repeatedly held that a trial court’s discretion is limited to deciding only the amount of reasonable fees. *Northwest Cascade, Inc. v. Unique Const., Inc.*, 187 Wn.

App. 685, 704, 351 P.3d 172 (2015) (citing *Singleton v. Frost*, 108 Wn.2d 723, 729, 742 P.2d 1224 (1987)); *Kofmehl v. Steelman*, 80 Wn. App. 279, 286, 908 P.2d 391 (1996). While a trial court has the authority to limit an award of attorney's fees and costs to a reasonable sum, the authority does not extend to reduction beyond what is reasonable based on:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

*Singleton v. Frost*, 108 Wn.2d at 731 (citing *Daniels v. Ward*, 35 Wn. App. 697, 705, 669 P.2d 495 (1983)).

After a trial court determines that an attorney's fee amount is reasonable based on the above factors, a trial court may adjust the amount further to reflect two factors not yet considered, specifically: (1) the contingent nature of success, and (2) the quality of work performed. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d at 598–99. Importantly, a trial court cannot consider a party's economic status under *Bowers*. See *id* at 597-600. The party proposing to further adjust an attorney fee

amount bears the burden of justification. *Bowers*, 100 Wn.2d at 598–99 (citing *Copeland v. Marshall*, 641 F.2d 880, 892 (D.C. Cir. 1980)).

Here, the trial court abused its discretion because it refused to award PHA’s attorneys’ fees and costs after finding them reasonable. The trial court agreed with PHA that it was entitled to attorneys’ fees and costs under the lease agreement and RCW 4.84.330. CP at 18:9-15. Thus, under *Northwest Cascade, Inc.* and *Bowers*, the trial court was obligated to award PHA its fees and costs. See *Northwest Cascade, Inc.*, 187 Wn. App. at 704; see also *Bowers*, 100 Wn.2d at 598–99.

Although Tenant’s counsel could have moved the trial court to further adjust the attorneys’ fees and costs based on the two other factors discussed in *Bowers*, Tenant’s counsel failed to do so. Instead, Tenant’s counsel acknowledged that he was not disputing PHA’s requested fees and costs amount. RP at 18:4-9. Even if Tenant’s counsel had moved the trial court to adjust PHA’s attorneys’ fees and costs based on *Bowers*, *Bowers* does not give a trial court the authority to reduce fees based on a party’s economic status. See *Bowers*, 100 Wn.2d at 597–600. Accordingly, the trial court abused its discretion by failing to follow the correct legal standard. Once the trial court determined PHA’s fees were reasonable, it was obligated to award them absent Tenant’s counsel citing to a relevant *Bowers* factor for further adjustment of the amount.

## 2. The Trial Court's Reliance on *Wakefield* is Incorrect

Second, in reducing PHA's attorneys' fees and costs award, the trial court exceeded its authority by extending *Wakefield*—a criminal case—to civil litigation. In *Wakefield*, the Supreme Court addressed whether Legal Financial Obligations (“LFOs”), including criminal fines and administrative costs, should be imposed when an individual has a demonstrated inability to pay. 186 Wn.2d at 605-06. The Supreme Court held that, pursuant to RCW 10.01.160(4), a criminal defendant who has been ordered to pay LFOs and who is current in their payment thereof may apply to the sentencing court for remission of their debt on a showing that payment of the amount due will impose a manifest hardship on the defendant. *Id.* RCW 10.01.160(4) requires the following: (1) court-ordered assessment of LFOs, (2) up-to-date payment of court-ordered amounts, (3) application for remission of the debt, and (4) judicial review of the defendant's ability to pay any sum. Importantly, *Wakefield* contains no language indicating that the Supreme Court meant it to apply in the civil law context; rather, the Supreme Court's analysis was limited to the criminal context and RCW 10.010.160. *See Wakefield*, 186 Wn.2d at 604-11.

LFOs are essentially criminal court fines. Because those fines can have a punitive effect that is inconsistent with GR 34,<sup>2</sup> RCW 10.01.160(4) allows a court to waive LFOs when a criminal defendant

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<sup>2</sup> GR 34 allows an indigent person to apply to have his or her court filing fees waived. *See* GR 34(a).

demonstrates he or she cannot pay the LFO. *See Wakefield*, 186 Wn.2d at 606-07. Because there is no alternative procedure, individuals who lack the ability to pay criminal LFOs may be found in contempt and re-arrested for a default in payment thereof. RCW 10.01.180. This alternative poses two serious public policy issues. First, a criminal defendant may end up back in confinement simply for being unable to pay their debt turning the penal system into a debtor's prison. Secondly, LFOs are not dischargeable in a civil bankruptcy proceeding making LFO debt potentially unescapable for some individuals. *State v. Cunningham*, 116 Wn. App. 946, 952, 69 P.3d 358 (2003). Importantly, neither RCW 10.01.160(4), nor the line of cases interpreting and applying that statute applies to civil litigation.

Unlike LFOs, a civil judgment is not simply a court cost or fine that can be waived under GR 34 based on indigence. Rather, civil judgments (such as the one at bar) represent money one party is owed under a contract. Although the trial court might deem it virtuous to make a decision about enforcing a contract based on one party's supposed financial situation, "[a] court cannot, based upon general considerations of abstract justice, make a contract for parties which they did not make for themselves." *Wagner v. Wagner*, 95 Wn.2d 94, 104, 621 P.2d 1279 (1980).

Moreover, the trial court's concerns are misplaced. When it comes to enforcing the judgment, Tenant will have the protections available

under Washington law. Specifically, under Chapters 6.13 RCW and 6.15 RCW, there are existing procedures related to civil judgment enforcement designed to protect low income civil judgment debtors. For example, both state and federal law exempt certain property from enforcement of a civil judgment. 28 Marjorie Dick Rombaur, *Washington Practice: Creditors' Remedies - Debtors' Relief* § 7.1 (2016) Further, Washington law provides (1) a homestead exemption up to a fixed dollar limit, (2) personal property exemptions for specified kinds of personal property, (3) an earnings exemption, and (4) exemptions for other types of property interests deemed important as a matter of public policy. *Id.* Moreover, in a civil context, there exists a full body of legal processes providing post-adjudication protection to judgment debtors who lack the ability to pay. *See* Chapter 6.13 RCW, Chapter 6.15 RCW.

Even if, *arguendo*, *Wakefield* did provide an appropriate standard for the trial court to apply, the trial court would nonetheless still have erred in finding Tenant met that standard because there was no information in the record related to Tenant's application to the court for remission of the amount or judicial review of defendant's ability to pay as directed in RCW 10.01.160(4). *See Wakefield*, 186 Wn.2d at 607. The record contained only vague, speculative information related to Tenant's finances. CP at 15:13-20. The trial court's determination was apparently made on a vague assertion that Tenant qualifies for, but does not receive, "SSI" and relies on "spousal support." *Id.* As discussed above, RCW

10.01.160(4) requires entry of a court order for the full amount owed by the criminal defendant, timely payment of the debt, application for reduction of the debt, and judicial review of the defendant's ability to pay any amount. Thus, even if *Wakefield* somehow applied, the trial court erred in finding that standard was met.

The trial court abused its discretion by applying an incorrect legal standard from *Wakefield* to the present case.

**3. The Trial Court's Decision Undermines Fundamental Principles of Contract Law by Making Contract Enforcement Unpredictable**

By premising enforcement of the lease agreement on Tenant's economic status, the trial court's decision undermines fundamental principles of contract law. Parties enter into contracts to provide certainty and foster reliance on the agreement. *Erwin v. Cotter Health Centers, Inc.*, 133 Wn. App. 143, 151, 135 P.3d 547 (2006) (citing Restatement (Second) of Conflict of Laws § 187, cmt. e (1971)). Washington courts do not allow parties whose rights rest upon a written, unambiguous contract to claim they did not read or did not understand the contract's terms. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37 (1987). Tenant signed the lease and is bound by her obligations regardless of her financial situation, which may or may not be different than it was when she entered the contract. In finding Tenant could not be liable for attorneys' fees and costs incurred due to her breach of contract, the trial court failed to acknowledge that Tenant entered the contractual

relationship in the same or similar financial circumstance and accepted the contract's attorney's fee provision at that time. PHA relied on Tenant's acceptance of the attorney's fee provision and the other terms of the agreement when it agreed to lease the premises to Tenant. Allowing Tenant to escape her contractual obligations through a vague claim that she cannot afford the consequence of her own actions threatens the basis of the contract law applicable to this matter.

In its attempted to premise its decision on specific language from the lease agreement, the trial court unreasonably stretched that language to essentially re-write the contract. The trial court relied on the lease provision that stated, "the Court shall award attorney fees and costs incurred as appropriate." CP at 92:3(E). The trial court reasoned that the term "as appropriate" in the lease's attorney's fee provision allowed it to consider Tenant's financial status. CP at 18:11-14. This undermines contract law by making the lease agreement unpredictable. The trial court's broad application of the term "as appropriate" is misguided and challenges fundamental contract law policy—"to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract." Restatement (Second) of Conflict of Laws § 187, cmt. e (1971). The trial court abused its discretion by finding the term "as appropriate" applies so broadly so as to include consideration of the Tenant's economic status



and, in doing so, essentially re-wrote the lease agreement, undermining contract law theories and creating unpredictability in the lease agreement.

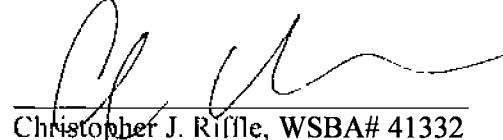
## **VI. CONCLUSION**

Tenant voluntarily entered into the lease and accepted the attorney's fee provision. She defaulted in her obligation to pay rent and PHA was forced to bring an unlawful detainer action to enforce its rights under the lease. The trial court found that PHA was entitled to reasonable attorneys' fees and costs and that PHA's attorneys' fees and costs in the matter were reasonable. However, the trial court reduced PHA's attorneys' fees and costs award based on Tenant's supposed economic status.

This Court should reverse the trial court because it lacked the authority to essentially re-write the lease agreement between the parties and reduce PHA's reasonable attorneys' fees and costs. Under applicable Washington law, the only authority the trial court had was to determine the reasonableness of PHA's attorneys' fees and costs. Once the trial court determined PHA's attorneys' fees and costs were reasonable, it was obligated to award them. Second, the trial court applied the wrong legal standard by relying on *Wakefield*. *Wakefield* applies only to indigent defendants in the criminal context—not to private parties in the civil context. Finally, as a policy matter, the trial court's decision undermines fundamental principles of contract law by making enforcement of contracts unpredictable.

Respectfully submitted this 20 day of March, 2017.

PLATT IRWIN LAW FIRM

A handwritten signature in black ink, appearing to read 'C. Riffle', is written over a horizontal line.

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